Goldstein | Ryder

The Employment Lawyers

Employment law update

Volume 5, Issue 4 May 2015

Directors:

Jeff Goldstein

Email: jeff@emplawyers.co.nz

Linda Ryder

Email: linda@emplawyers.co.nz

Staff Solicitor

Carolyn Davies

Email: carolyn@emplawyers.co.nz

Registered Legal Executive

Julie Knowles

Email: julie@emplawyers.co.nz

Office Administrator

Melissa Cowan

Email: melissa@emplawyers.co.nz

NEWSFLASH

Goldstein Ryder has been nominated in the Employment Law Specialist Firm of the Year category in the 2015 Australasian Law Awards which are being held in Sydney on 21 May 2015.

Changes to the 30 day rule as of 6 March 2015

The Employment Relations Amendment Act 2014 came into force on Friday 6 March 2015 and introduced a number of changes. An overview of those changes is provided in our November 2014 newsletter.

For those employers with collective employment agreements (CEA), a core change has been made to requirements surrounding new employees.

Under the previous law, if a new employee was not a union member, they would still be covered by the collective agreement for the first 30 days of their employment. Many agreements provide that employers must employ new employees on the terms of the collective agreement for the first 30 days of their employment. That provision remains enforceable/binding until the CEA expires. If an employer does not want that clause then it will need to negotiate for its removal during the next round of bargaining.

This new law is subject to the terms of the existing collective agreements. The law now provides that employees will not automatically be covered by the CEA for the first 30 days. All new employees can now be employed on an individual employment agreement (IEA) straightaway. An employee will only be covered by a CEA if the employee joins the union and their role is covered under the CEA. Employers are still required to inform new employees that the collective agreement exists and covers their work, give them a copy and tell them how to join and contact the union.

Subject to the terms of the CEA, the new law removes the 30 day rule so that employers can offer individual employment agreements to all new employees whose work is covered by a collective agreement but who are not union members.

If there is no trial period in the current collective, it was not possible to introduce a trial period clause in an individual employment agreement after the expiry of the 30 days. This is because the employee would not meet the requirement of 'new employee' under the Act. The new law may make it possible for the employer to have a trial period.

What has stayed the same?

If you have a collective agreement in your workplace, new employees who are union members are automatically covered by the collective agreement.

If you would like assistance reviewing and editing your employment agreements in light of the above changes, please contact **Linda Ryder or Jeff Goldstein on 03 343 4419.**

Taking the Cake

The Human Rights Review Tribunal recently awarded Karen Hammond $168,000 in damages. The award was for the actions her former employer New Zealand Credit Union (NZCU) took after they became aware of a photo of a cake that Ms Hammond had baked with the words "*NZCU f**k you*" ('the photo') written on it.

The photo was shared on Ms Hammond's private facebook page. Only her facebook friends had the ability to access and view the photo. Ms Hammond was not employed at the time the photo was posted online. A young employee and friend of Ms Hammond's was forced by NZCU to provide them with a copy of the photo. NZCU's Human Resources Manager, Louise Alexandra sent the photo to several local recruitment agencies and advised them not to assist Ms Hammond. Ms Hammond had to resign from her new position with Financepoint because NZCU refused to deal with her and put pressure on her employer.

In its finding, the Tribunal found that NZCU had breached Principle 11 of the Privacy Act 1993. This principle states that personal information should not be disclosed for purposes other than those for which the information was obtained. In assessing the effect of this breach, the Tribunal found the following had occurred:

- NZCU disclosed the information with the express intent of ensuring Ms Hammond would be terminated from new employment, and would be unable to work locally;
- Ms Hammond had felt her new position was untenable and resigned;
- Ms Hammond remained unemployed for 10 months following the breach and has been unable to find employment in finance;
- Ms Hammond suffered humiliation when applying for jobs well beneath her skill and experience and suffered anxiety wondering whether prospective employers were aware of what had occurred; and
- Ms Hammond's personal relationships suffered due to the stress she had experienced.

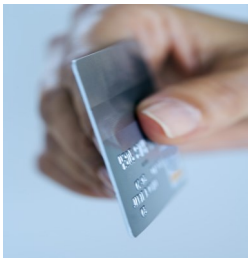
The Tribunal awarded $98,000 of the total sum for emotional harm to Ms Hammond. This is significant when compared to the usual ERA awards of between $3,000 and $7,000 for hurt and humiliation under s 123(1)(c)(i).

This case demonstrates a potentially lucrative avenue that an employee can take in order to obtain significant remedies. Remedies are similarly available for claims made under the Human Rights Act 1993 or the Health and Disability Commissioner Act 1994.

Training Seminar Series

Our final seminar on the proposed amendments to the Health and Safety legislation is being held on Tuesday 26 May at 9.30am. A flyer is attached if you would like to register your attendance.

If you have any particular topics you would like to learn more about, please let us know.



You can now pay your Goldstein Ryder invoice by Eftpos at our office or by credit card over the phone

We can now accept payment of your Goldstein Ryder invoice at our office by Visa or Mastercard credit cards or debit card and EFTPOS. We can also accept credit card payments over the phone.

You can also continue to pay your invoice in the usual way through online banking and by cheque.

We are happy to provide you with advice on any of the issues contained in this newsletter.
Please feel free to contact our Directors, Jeff and Linda to discuss.